

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH M. ANTIO,

Plaintiff,

Civil Action No.
08-CV-14933

vs.

COMMISSIONER OF SOCIAL
SECURITY,

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Defendant.
_____/

**ORDER ACCEPTING THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT, DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, AND
OVERRULING PLAINTIFF'S OBJECTIONS**

This is a social security case. Plaintiff Joseph M. Antio challenges the final decision of the Commissioner of Social Security in which the Commissioner determined that Antio was not under a disability at any time from December 10, 2004, through the date of the ALJ's May 30, 2008, decision. The matter was referred to Magistrate Judge Mona K. Majzoub for all pretrial proceedings. Antio and the Commissioner filed cross motions for summary judgment. On February 5, 2010, Magistrate Judge Majzoub issued a Report and Recommendation ("R&R") in which she recommends that the Commissioner's motion be granted and that Antio's motion be denied.

On February 19, 2010, Antio filed objections to the R&R. The Commissioner filed a response to Antio's objections on March 5, 2010. The court reviews *de novo* those portions of the R&R to which a specific objection has been made. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

In his objections, Antio argues that the main problem with the ALJ's decision, and the Magistrate Judge's R&R, is that both improperly discount the opinions of his treating physicians, Dr. Keating and Dr. Potnis, while giving controlling weight to the opinions of an agency evaluator who did not examine Antio but instead merely reviewed the records and completed a Physical Residual Functional Capacity Assessment form. According to Antio, the "Physical Residual Functional Capacity Assessment . . . is the only evidence which supports the finding of light work," Objections at 8, and "the complete foundation of the [ALJ's] opinion is the Physical Residual Functional Capacity Assessment." Objections at 9.

In support of these arguments, Antio relies heavily on medical documentation attached as Exhibit A to his Motion for Summary Judgment. However, these documents all post-date the ALJ's decision.¹ Thus, the Magistrate Judge correctly determined that the Court cannot consider this evidence. *See* R&R at 15 (citing, among other sources, *Wyatt v. Sec'y of Health & Human Servs.*, 974 F.2d 680, 685 (6th Cir. 1992) ("[t]he court is confined to review evidence that was available to the Secretary, and to determine whether the decision of the Secretary is supported by substantial evidence")). In his objections, Antio urges the Court to consider these documents but fails cite any legal authority authorizing the Court to do so.

The Magistrate Judge also correctly noted that the Court

may still remand the case to the ALJ [pursuant to sentence six of 42 U.S.C. § 405(g)] to consider this additional evidence but only upon a showing that the evidence is new and material and "that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding."

R&R at 15 (quoting 42 U.S.C. § 405(g)). For the reasons stated in the R&R at 15-16, Antio has not

¹ The ALJ issued his decision on May 30, 2008. The documents attached as Exhibit A are dated June 26, 2008, July 10, 2008, July 21, 2008, August 5, 2008, and August 13, 2008.

met his burden of showing that a sentence six remand is appropriate.

Having reviewed this matter *de novo*, the Court agrees with the Magistrate Judge's conclusion that substantial evidence supports the ALJ's decision. Magistrate Judge Majzoub correctly and thoroughly analyzed all of the issues presented and reached the proper conclusions for the proper reasons. Therefore, the Court will accept and adopt the Magistrate Judge's recommendations as the findings and conclusions of the Court.

Accordingly,

IT IS ORDERED that the Magistrate Judge's R&R is accepted and adopted as the findings and conclusions of the Court.

IT IS FURTHER ORDERED that the Commissioner's Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED that Antio's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that Antio's objections are overruled.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: March 8, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on March 8, 2010.

s/Denise Goodine
Case Manager